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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,462	10/06/2000	Mark A. Kottman	087522785134	3279
7590	02/27/2002	Russell L. McIlwain Jones, Day, Reavis & Pogue 77 West Wacker Chicago, IL 60601-1692	EXAMINER HORTON, YVONNE MICHELE	
			ART UNIT 3635	PAPER NUMBER

DATE MAILED: 02/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/684,462	Applicant(s) <b>MARK KOTTMAN</b>
	Examiner <b>YVONNE M. HORTON</b>	Art Unit <b>3635</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on Oct 6, 2000
- 2a)  This action is FINAL.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 1-3 is/are allowed.
- 6)  Claim(s) 4-6 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- |  |  |
|--|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>4</u> | 20) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #6,128,877 to GOODMAN et al. GOODMAN et al. discloses the use of a modular wall panel including a generally rectangular frame (2) having a lower channel member (44), a base rail (12), at least two glide assemblies (GA) (see marked-up attachment), apertures (unlabeled), see Figure 18 in the lower channel member for receipt of an upwardly directed threaded member (37). The step of inserting a rotary tool is a method step which is not germane to the issue of patentability of the modular wall panel itself. Therefore, this limitation has not been patentable weight in this apparatus claim.

In regards to claims 5 and 6, the modular wall system of GOODMAN et al. further includes a decorative panel (30) and a base panel (81).

***Allowable Subject Matter***

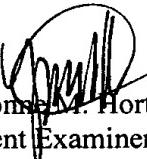
6. Claims 1-3 are allowed.

7. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the method of constructing and installing a modular wall panel including the step of inserting a rotary tool vertically through an aperture formed in a lower channel frame member to engage a threaded member and rotating the threaded member to level the frame of the modular wall assembly.

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In the majority of the prior art satisfying the structural limitations, the lower channel is substantially close to the floor thereby leaving no room for a tool to be inserted thereunder.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.



Yvonne M. Horton  
Patent Examiner  
Art Unit 3635  
February 24, 2002

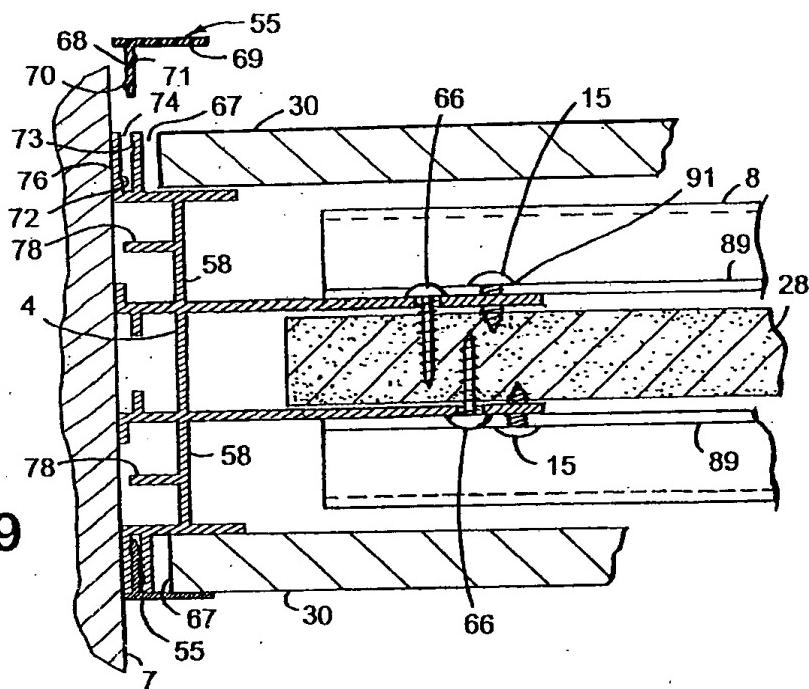


Fig. 9

